

IN THE COURT OF COMMON PLEAS FOR THE STATE OF  
DELAWARE IN AND FOR KENT COUNTY

Walter Coverdale,	:	C.A. No. 06-01-0044
	:	
Plaintiff,	:	
	:	
vs.	:	
	:	
Bayhealth Medical Center, Inc. and	:	
PMA Management Corp.,	:	
	:	
Defendants.	:	

**Upon Plaintiff's Motion for Summary Judgment**

**Submitted: May 16, 2006**

**Decided: May 16, 2006**

**Judgment is entered on behalf of Plaintiff, William Coverdale,  
and against Defendants, Bayhealth Medical Center and  
PMA Management Corp.**

Walter F.Schmittinger, Esquire, Schmittinger & Rodriguez, P.A., 414 South State Street,  
P O Box 497, Dover, Delaware 19903, Attorney for the Plaintiff

Timothy A. Casey, Esquire, Marshall, Dennehey, Warner, Coleman & Goggin, 1220  
North Market Street, Post Office Box 8888, Wilmington, Delaware 19899, Attorney for  
the Defendants, Bayhealth Medical Center, Inc. and PMA Management Corp.

Trader J.

In this civil action to recover liquidated damages for unpaid workers' compensation benefits, claimant's demand letter for payment of all workers' compensation benefits due was sufficiently specific to be enforceable under the Wage Payment and Collection Act. Accordingly, the plaintiff's motion for summary judgment is granted.

The relevant facts are as follows: The plaintiff was injured in an industrial accident on November 9, 2002. At a hearing before the Industrial Accident Board on October 15, 2004 on employer's petition to terminate or modify compensation for temporary partial disability, the Board dismissed the employer's petition. The Board ordered the employer to pay outstanding medical bills in the amount of \$2,065.51, as well as plaintiff's attorney's fees in the amount of \$4,500.00. By letter dated December 6, 2004, the plaintiff, through his attorney, submitted a demand for payment of all workers' compensation benefits due the plaintiff. The defendants' counsel responded to plaintiff's counsel enclosing a ledger detailing all medical expenses paid, and asking plaintiff's counsel for a clarification of the demand. On April 13, 2005, plaintiff's counsel by letter made a demand for the payment of the \$4,500.00 attorney's fees. On April 26, 2005, the defendants paid the \$4,500.00 attorney's fees awarded by the Board on October 28, 2004. Because of the failure of the defendants to timely pay the award of attorney's fees, the plaintiff filed a civil action in this Court for a maximum of 100% of the unpaid benefits under 19 Del.C. Sec. 1103(b).

The plaintiff has filed a motion for summary judgment and summary judgment will be rendered in any case if there is no genuine issue as to any material fact.

*Wilmington Trust Co. v. Aetna Casualty and Surety Co.*, 690 A.2d 914 (Del. 1996). The moving party has the burden of demonstrating that no issue of material fact exists.

*Borish v. Graham*, 655 A.2d 831 (Del. Super. 1994). The non-moving party must set

forth evidence to show a genuine issue of fact for trial. *Bryant v. Federal Kemper Ins. Co.*, 542 A.2d 347 (Del. Super. 1988).

The plaintiff has moved for summary judgment under 19 Del. C. Sec. 2357, which provides as follows: “If default is made by the employer for 30 days after demand in the payment of any amount due under this chapter, the amount may be recovered in the same manner as claims for wages are collectible.” Wages in section 1113(a) are construed to include claims based on unpaid workers’ compensation benefits due after proper demand has been made. *Huffman v. Oliphant*, 432 A.2d 1207 (Del. 1981). In other words, if a default is made by the employer 30 days after demand in the payment of any amounts due under the workers’ compensation statute, the amount due may be recovered in the same manner as claims made pursuant to the Wage Payment and Collection Act. *Holden v. Gaico*, 736 A.2d 202, 204 (Del. 1999).

Defendants contend that Coverdale’s *Huffman* demand is unenforceable because it was not specific as to what compensation was being sought. Defendants’ contention is incorrect. Claimant’s demand letter of December 6, 2004, requesting payment of all workers’ compensation benefits due, has been held to be sufficient. *Kelley v. ILC Dover*, 787 A.2d 751 (Del. Super. 2000). The Delaware Supreme Court has implicitly held a similar demand letter to be timely and proper in *Holden v. Gaico, supra*.

The court stated in *Kelley* that:

[T]he original IAB award . . . provided proper notice of what was due to the plaintiff. The purpose behind the demand requirements of Section 2357 is to put defendants on notice of their default and permit them to cure their deficiency within thirty days in order to avoid incurring liquidated damages under the WPCA. The defendants’ obligations to pay benefits did not arise as a result of the demand letter . . . . The demand letter merely provided notice of the default to the defendants. Therefore, the plaintiff’s demand letter need not specifically reiterate the relief sought because both parties knew what payments were due the plaintiff. . . .

*Id.* at 754.

Applying the above principle of law to the case at bar, the letter in this case is virtually identical to the demand letter in *Kelley*. As in *Kelley*, the defendants in the case before me failed to cure the default within 30 days of the date of the demand, and as a result liquidated damages accrued under 19 Del. C. Sec. 2357. Since the Board award of \$4,500.00 attorney's fees was not paid within 30 days of demand, the plaintiff is entitled to an additional sum of \$4,500.00 in liquidated damages.

The defendants assert that they responded to plaintiff's December 6 *Huffman* demand by enclosing a payment ledger detailing expenses paid and requesting plaintiff's counsel to clarify the demand for late payments. They contend that the failure of plaintiff's counsel to respond to the request for clarification of what benefits were outstanding is a material issue of fact. I disagree. Both parties knew what payments were outstanding from the Board's decision. The failure to pay all benefits within 30 days of the demand of December 6, 2004 results in the accrual of liquidated damages. The plaintiff's demand letter of April 13, 2005 was a reiteration of plaintiff's previous demand letter of December 6, 2004. I hold that there is no material issue of fact and plaintiff's motion for summary judgment is granted.

Accordingly, judgment is entered in behalf of the plaintiff, William Coverdale, and against the defendants, Bayhealth Medical Center and PMA Management Corp., for the sum of \$4,500.00, plus prejudgment interest at the legal rate from January 6, 2005, and reasonable attorney's fees.

**IT IS SO ORDERED.**

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**Merrill C. Trader**  
**Judge**